



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

September 15, 2015
1509-SE-02 & 1509-VS-13
Exhibit 1

Petition Number: 1509-SE-02 & 1509-VS-13

Subject Site Address: 19540 Lamong Road (the "Property")

Petitioner: Cindy Tripp d/b/a Heavenly Care Kennels (the "Petitioner")

Request: The petitioner is requesting approval of a Special Exception to allow the continued use of a kennel business (Chapter 13: Use Table) and a Variance of Development Standard to reduce the Minimum Lot Frontage requirement, which would allow the subject property to be split into two (2) lots in the AG-SF1: Agriculture-Single Family Rural District (Article 4.2 (D)).

Current Zoning: AG-SF1: Agriculture-Single Family Rural District ("AG-SF1")

Current Land Use: Residential/Kennel Business

Approximate Acreage: 11.7 acres +/-

Zoning History: 0706-SE-01 – Special Exception for Kennel Use, *Approved 06/18/07*
0706-VS-014 – Subordinate Structures Variance, *Approved 06/18/07*
0706-VS-015 – Fence Height Variance, *Approved 06/18/07*
0710-DP-15/0710-SIT-12 – Development Plan, *Approved 10/22/07*

Exhibits: Exhibit 1: Staff Report
Exhibit 2: Location Map
Exhibit 3: Application
Exhibit 4: Existing Conditions Photos
Exhibit 5: Current Site Plan
Exhibit 6: Current Structure Site Plan
Exhibit 7: Current Utility Plot Plan
Exhibit 8: Proposed Site Plan
Exhibit 9: 2007 BZA Approval Letter

Staff Reviewer: Kevin M. Todd, AICP

PETITION HISTORY

This petition will receive a public hearing at the September 15, 2015, Board of Zoning Appeals meeting.



ANALYSIS

Location: The subject property is approximately 11.7 acres +/- in size and located at 19540 Lamong Road (**see Exhibit 2**). The Property is zoned AG-SF1 and currently contains a residential structure, a kennel structure, and three (3) accessory structures. The surrounding adjacent properties in all directions are zoned AG-SF1 and are large-lot, rural-residential/agricultural in nature and use.

Property History: On June 18, 2007, the Board of Zoning Appeals approved a Special Exception request (0706-SE-01) to allow a kennel business on the Property (the "2007 Special Exception"). Two (2) Variances of Development Standard (0706-VS-014 and 0706-VS-015) were also approved which addressed accessory building size and fence height issues for the kennel use (**see Exhibit 9**). The 2007 Special Exception was approved with a condition that the Special Exception be granted for a period of five (5) years. The 2007 Special Exception approval expired on June 18, 2012. There were no time limits associated with either Variance of Development Standard approval.

On October 22, 2007, the Advisory Plan Commission approved development and site plans for the construction of the outdoor runs and expansion of the indoor kennel building (0710-DP-15/0710-SIT-12). To-date, the building expansion has not been constructed, and the Petitioner has indicated that there are no plans to expand the building now.

Special Exception Request (1509-SE-02): The 2007 Special Exception expired over three years ago, however, unbeknown to the City, the Property has maintained the use as a kennel. While operating as an illegal use for the past three-plus (3+) years, the Economic and Community Development Department has not received any complaints regarding the use/business on the Property. The Petitioner has filed a Special Exception request to legally allow the continued use of the kennel business on the Property. According to the Petitioner, no future construction/expansion is anticipated for the kennel business.

Variance of Development Standard Request (1509-VS-13): In addition to the Special Exception request, the Petitioner would like to split the 11+ acre property into two (2) lots. One lot would contain the kennel business and its associated structures, and a second lot would contain a new residential structure. The existing lot has approximately 300 feet +/- of road frontage. In order to legally split property in AG-SF1, each lot created would need a minimum of 250 feet of road frontage. The Property does not have enough road frontage to meet this requirement. The Petitioner is requesting that one lot have a minimum road frontage of 144 feet +/- (Lot 1), and the other lot have a minimum road frontage of 166 feet +/- (Lot 2) (**see Exhibit 8**). Lot 1 would be approximately 6.3 acres +/- in size and would be the new residential home site. Lot 2 would be approximately 5.4 acres +/- in size and would be the kennel business site. All other AG-SF1 standards would apply.

As shown on the proposed site plan, the existing driveway would be shared and no additional road cuts on Lamong Road would be needed (**see Exhibit 8**).



Comprehensive Plan: The Comprehensive Plan identifies this Property within the “Rural Northwest” land use classification. Large-lot single-family residential and agricultural uses are recommended in this area of the community.

PROCEDURAL

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Special Exception and Variances of Development Standard. The petitions are scheduled to receive its public hearing at the September 15, 2015, Board of Zoning Appeals meeting. Notice of the public hearings were properly advertised in accordance with Indiana law and the Board of Zoning Appeals’ Rules of Procedure.

Conditions: The UDO¹ and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

Acknowledgement of Variance: If the Board of Zoning Appeals approves this petition, then the UDO² requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

Special Exceptions: The UDO (Chapter 12: Definitions) defines “Special Exception” as “[a] use that requires a greater degree of scrutiny and review because of its potential adverse impact upon the immediate neighborhood and the community that is reviewed by the Board of Zoning Appeals for its characteristics and impacts to determine its suitability in a given location for the Zoning District in which it is permitted”.

Special Exception Decision Criteria: A Special Exception may be approved by the Board of Zoning Appeals only upon the determination in writing that the Special Exception at the proposed location meets the following³:

¹ Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

² Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.

³ Article 10.11(D) Processes and Permits; Special Exceptions; Review Criteria



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1. The establishment, maintenance, or operation of the Special Exception will not be detrimental to or endanger the public health, safety, morals, or general welfare;
2. The Special Exception will be designed, constructed, operated, and maintained so as to: (i) not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted; (ii) not substantially diminish and impair property value within the neighborhood; (iii) be harmonious and appropriate in appearance with the existing or intended character of the immediate vicinity; and (iv) not change the essential character of the area;
3. The establishment of the Special Exception will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the Zoning District;
4. Adequate public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools have been or are being provided and the Special Exception will not result in excessive additional requirements at public expense for such public facilities and services;
5. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion and have vehicular approaches are designed as not to create an interference with traffic on surrounding rights-of-way;
6. The Special Exception will be harmonious with and in accordance with the objectives of the Comprehensive Plan; and
7. The Special Exception will be located in a Zoning District where such use is permitted and that all other requirements of the Zoning District and this Ordinance, and as may be applicable to such use, will be met.

Variances of Development Standard Decision Criteria: Variances of Development Standard may be approved only upon the determination that⁴:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property.

⁴ Article 10.11(G)(2) Processes and Permits; Variances, Decision Criteria



DEPARTMENT COMMENTS

- **If the Board of Zoning Appeals is inclined to APPROVE the Special Exception and Variance of Development Standard**, then the Department recommends approving the petitions with the following **conditions**:

Recommended Conditions:

1. Only one (1) driveway cut is allowed for the entire 11.8 acre property;
 2. An access easement for the shared driveway is legally established and recorded prior to the subdivision of the Property; and,
 3. The size and scope of the kennel business be substantially similar to the information depicted in **Exhibits 4-8**.
- **The Department recommends the following Findings of Fact for the Special Exception and Variance of Development Standard cases:**

SPECIAL EXCEPTION (1509-SE-02)

Recommended Findings of Fact (APPROVAL):

1. *The establishment, maintenance, or operation of the Special Exception will not be detrimental to or endanger the public health, safety, morals, or general welfare:*

Finding: It is unlikely that approving the requested Special Exception would be injurious to the public health, safety, morals, and general welfare of the community because the use has been in operation for over eight years without incident. All kenneled animals will be kept either indoors or within a fully enclosed outdoor run.

2. *The Special Exception will be designed, constructed, operated, and maintained so as to: (i) not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted; (ii) not substantially diminish and impair property value within the neighborhood; (iii) be harmonious and appropriate in appearance with the existing or intended character of the immediate vicinity; and (iv) not change the essential character of the area:*

Finding: It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The proposed kennel use has been in operation for over eight years. Allowing the use to continue operations should not have a negative impact on neighboring properties.

3. *The establishment of the Special Exception will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the Zoning District:*

Finding: It is unlikely that allowing the continued use of the kennel will impede the normal and orderly development of the surrounding area for uses permitted in the AG-SF1 area. Large-lot residential uses, agricultural uses, and institutional uses are allowed



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in AG-SF1 by-right and are unlikely to conflict with the neighboring kennel operation because of its limited size and scope.

4. *Adequate public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools have been or are being provided and the Special Exception will not result in excessive additional requirements at public expense for such public facilities and services:*

Finding: The use should have little or no impact on utilities, streets, drainage or other necessary facilities.

5. *Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion and have vehicular approaches are designed as not to create an interference with traffic on surrounding Rights-of-way:*

Finding: The 2007 Development Plan review and approval addressed ingress/egress needs for this site. Unless the use changes or dramatically increases over what was approved in 2007, there is no further need to address ingress/egress to this site.

6. *The Special Exception will be harmonious with and in accordance with the objectives of the Comprehensive Plan:*

Finding: The Comprehensive Plan identifies this Property within the "Rural Northwest" land use classification. Large-lot single-family residential and agricultural uses are recommended in this area of the community. Kennel uses are identified in the UDO as appropriate in agricultural areas (AG-SF1) by Special Exception approval.

7. *The Special Exception will be located in a Zoning District where such use is permitted and that all other requirements of the Zoning District and this Ordinance, and as may be applicable to such use, will be met.*

Finding: If the property remains in its current configuration, it will be fully compliant with the AG-SF1 standards. If the property is subdivided as contemplated in this request, pending approval of 1509-VS-13, the property will be compliant with the AG-SF1 standards.

Recommended Findings of Fact (DENIAL):

1. *The establishment, maintenance, or operation of the Special Exception will not be detrimental to or endanger the public health, safety, morals, or general welfare:*

Finding: It is unlikely that approving the requested Special Exception would be injurious to the public health, safety, morals, and general welfare of the community because the use has been in operation for over eight years without incident. All kenneled animals will be kept either indoors or within a fully enclosed outdoor run.



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2. *The Special Exception will be designed, constructed, operated, and maintained so as to: (i) not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted; (ii) not substantially diminish and impair property value within the neighborhood; (iii) be harmonious and appropriate in appearance with the existing or intended character of the immediate vicinity; and (iv) not change the essential character of the area:*

Finding: It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The proposed kennel use has been in operation for over eight years. Allowing the use to continue operations should not have a negative impact on neighboring properties.

3. *The establishment of the Special Exception will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the Zoning District:*

Finding: It is possible that allowing the continued use of the kennel will impede the normal and orderly development of the surrounding area for uses permitted in the AG-SF1 area. Potential AG-SF1 uses such as large-lot residential uses and institutional uses may conflict with the neighboring kennel operation.

4. *Adequate public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools have been or are being provided and the Special Exception will not result in excessive additional requirements at public expense for such public facilities and services:*

Finding: The use should have little or no impact on utilities, streets, drainage or other necessary facilities.

5. *Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion and have vehicular approaches are designed as not to create an interference with traffic on surrounding Rights-of-way:*

Finding: The 2007 Development Plan review and approval addressed ingress/egress needs for this site. Unless the use changes or dramatically increases over what was approved in 2007, there is no further need to address ingress/ingress to this site.

6. *The Special Exception will be harmonious with and in accordance with the objectives of the Comprehensive Plan:*

Finding: The Comprehensive Plan identifies this Property within the "Rural Northwest" land use classification. Large-lot single-family residential and agricultural uses are recommended in this area of the community. Kennel uses are identified in the UDO as appropriate in agricultural areas (AG-SF1) by Special Exception approval.

7. *The Special Exception will be located in a Zoning District where such use is permitted and that all other requirements of the Zoning District and this Ordinance, and as may be applicable to such use, will be met.*

Finding: If the property remains in its current configuration, it will be fully compliant with the AG-SF1 standards. If the property is subdivided as contemplated in this request,



pending approval of 1509-VS-13, the property will be compliant with the AG-SF1 standards.

VARIANCE OF STANDARD (1509-VS-13)

Recommended Findings of Fact (APPROVAL):

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

Finding: It is unlikely that approving the requested variance would be injurious to the public health, safety, morals, and general welfare of the community. There would be one shared drive way and each lot would meet all other applicable AG-SF1 standards.

2. *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

Finding: It is unlikely that the use and value of adjacent property will be affected in a substantially adverse manner. The variance would allow the Property to be split into two lots, allowing a new residential structure to be built. Large-lot single-family dwellings are contemplated in the Comprehensive Plan and allowed in the AG-SF1 District. Traffic patterns on Lamong Road would be impacted minimally, if at all, because there will be a shared driveway between the two properties.

3. *The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property.*

Finding: Strict adherence to the zoning ordinance would result in the inability to improve the Property, as proposed, in accordance with the Unified Development Ordinance. The use is contemplated by the Unified Development Ordinance and the proposed improvements and parcel would otherwise be permitted and comply with the Unified Development Ordinance.

Recommended Findings of Fact (DENIAL):

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

Finding: It is unlikely that approving the requested variance would be injurious to the public health, safety, morals, and general welfare of the community. There would be one shared drive way and each lot would meet all other applicable AG-SF1 standards.

2. *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*



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Finding: It is possible that the use and value of adjacent property will be affected in a substantially adverse manner. The proposed variance would allow the creation of two lots on property that is not configured in a manner that would otherwise allow it to be split into two lots. The AG-SF1 standards are intentionally designed to keep the rural character of the District, as described in the Comprehensive Plan. Allowing a second lot would allow a second residential dwelling on a lot with improper road frontage. Allowing this lot split could compromise the vision of the Comprehensive Plan for this area of the community.

3. *The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property.*

Finding: Strict adherence to the zoning ordinance would result in the inability to improve the Property, as proposed, in accordance with the Unified Development Ordinance. The use is contemplated by the Unified Development Ordinance and the proposed improvements and parcel would otherwise be permitted and comply with the Unified Development Ordinance.